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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-834

IRENE D. HAMILTON,

Appellant,

vs.

STATE OF INDIANA ex rel
RALPH W. VAN NATTA,
Commissioner of Bureau of
Motor Vehicles,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF INDIANA

MOTION TO DISMISS OR AFFIRM

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TABLE OF CONTENTS

	Page
The State Statute Involved and the Nature of the Case	2
A. The Statute	2
B. The Proceedings Below	2
Argument	4
Conclusion	5

TABLE OF AUTHORITIES

Cases

	Page
Graham v. West Virginia, 224 U.S. 616, 32 S.Ct. 583, 56 L.Ed. 917	4
Gryger v. Burke, 334 U.S. 728, 68 S.Ct. 1256, 92 L.Ed. 1683	4
Lindsey, et al, v. Washington, 301 U.S. 397, 57 S.Ct. 797, 81 L.Ed. 1182	4
McDonald v. Massachusetts, 180 U.S. 311, 21 S.Ct. 389, 45 L.Ed. 542	4 & 5
Moore v. Missouri, 159 U.S. 673, 16 S.Ct. 179, 40 L.Ed. 301	5
State ex rel. Van Natta v. Rising, (1974) ——Ind.——, 310 N.E.2d 873	4

Other Authorities

Constitution of the United States, Article I, Section 10	2
I.C. 1971, 9-4-13-3 (Burns' Ind.Ann.Stat. § 47-2336)	2

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Pursuant to Rule 16, the Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Indiana on the ground that it is manifest that the questions on which the decision of the cause depend are so inconsequential and of such little substance as not to need further argument.

I.

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

A.

THE STATUTE

This appeal raises the question of whether certain provisions of the Indiana Habitual Traffic Offender Act, I.C. 1971, 9-4-13-3 (Burns' Ind.Ann.Stat. § 47-2336), are *ex post facto* laws and therefore in violation of and repugnant to the United States Constitution, Article I, Section 10. This statute provides that a person may be declared an habitual traffic offender and his driving privileges restricted for a period of not more than ten (10) years upon the occurrence of a certain number of specified traffic convictions within a ten (10) year period at least one of such offenses occurring on or after the effective date of the statute.

B.

THE PROCEEDINGS BELOW

Subsequent to the effective date of the statute here involved, the appellant was convicted of the offense of driving while under the influence of intoxicating liquor. Prior to the effective date of the statute, and within the ten (10) year statutory period, the appellant committed six (6) traffic offenses, which offenses are of the number and type sufficient to bring her within the scope of the statute.

A complaint in the form of an affidavit was filed against the appellant in the Circuit Court of Vanderburgh County, Indiana, to declare her to be an habitual traffic offender.

The appellant has never denied the truth of the convictions for the seven (7) serious driving offenses set out in the affidavit.

Prior to trial, the appellant raised by way of Special Defenses the issue that the statute upon which the State's claim was based, I.C. 1971, 9-4-13-3 (Burns' Ind.Ann.Stat. § 47-2336) was unconstitutional in that it violates the United States Constitution, Article I, Section 10 which provides that no person shall be convicted of an offense under way *ex post facto* law.

The trial court entered judgment against the appellant, and she appealed to the Indiana Court of Appeals. The Indiana Court of Appeals affirmed the trial court's judgment and the appellant sought a rehearing in that court which was denied. Thereafter, the appellant petitioned the Supreme Court of Indiana to review, or transfer, the judgment of the opinion of the Indiana Court of Appeals. The Supreme Court of Indiana denied the Petition to Transfer without opinion, which denial affirmed the judgment of the Indiana Court of Appeals. *Hamilton v. State*, (1975) —— Ind.App.——, 323 N.E.2d 659.

II.

ARGUMENT

THE CASE PRESENTS NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DECIDED BY THIS COURT

The United States Supreme Court, in applying the *ex post facto* prohibition of the Federal Constitution to state laws, accepts the meaning ascribed to them by the highest court of the state. *Lindsey, et al, v. Washington,* 301 U.S. 397, 57 S.Ct. 797, 81 L.Ed. 1182. The Indiana Supreme Court has rendered its opinion as to the application of the *ex post facto* prohibition on the statute now in question. *State ex rel. Van Natta v. Rising,* (1974) —— Ind. ——, 310 N.E.2d 873. In that decision the Indiana Supreme Court held that the defendant was not being punished for acts which occurred prior to the enactment of the statute, but rather was falling into a class of persons prohibited from driving on the public highways for the protection of the remaining public using the highways. Such decision is not inconsistent with the rulings of this Court on the application of the *ex post facto* prohibition.

While the statute under attack herein is civil in nature, it may be likened to the various habitual criminal statutes enacted by the several states. This Court has previously determined that a sentence as an habitual criminal is not to be viewed as either a new jeopardy or additional penalty for the earlier crimes. It is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one. *Gryger v. Burke,* 334 U.S. 728, 68 S.Ct. 1256, 92 L.Ed. 1683; *Graham v. West Virginia,* 224 U.S. 616, 32 S.Ct. 583, 56 L.Ed. 917; *McDon-*

ald v. Massachusetts, 180 U.S. 311, 21 S.Ct. 389, 45 L.Ed. 542; *Moore v. Missouri,* 159 U.S. 673, 16 S.Ct. 179, 40 L.Ed. 301.

It is clear from the above cases that the appellant herein presents no substantial federal question not previously decided by this Court, and that the Indiana Court of Appeals, in applying the prior decision of the Indiana Supreme Court, correctly affirmed the decision of the trial court below.

III.

CONCLUSION

WHEREFORE, appellee respectfully submits that the questions upon which this cause depend are so unsubstantial as not to need further argument, and appellee respectfully moves the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Indiana.

Respectfully submitted,

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